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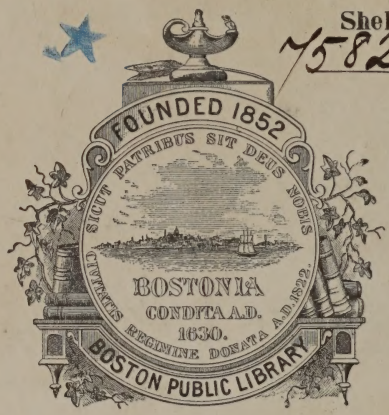

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FREE NEGROES AND MULATTOES.

HOUSE OF REPRESENTATIVES, JANUARY 16, 1822.

THE Committee, directed by an order of the House of Representatives, at the last session of the Legislature of this Commonwealth, to report a Bill concerning the admission into this State of free Negroes and Mulattoes, have considered the matter referred to them, and have agreed to the following

REPORT:

THAT the Committee, since the last session of the Legislature, have examined the laws of other States besides those mentioned in the former Report, concerning that description of population which is now the subject of consideration, but as the spirit of those laws does not differ from the Statutes to which reference has already been made, the Committee forbear consuming the time of the Legislature in a detail of their provisions.

That this further examination of the statutes of other States has served to confirm the Committee in an opinion expressed in the report of the last session, and to convince them of the necessity of checking the increase of a species of population, which threatens to be both injurious and burthensome, of which circumstances the following fact furnishes abundant evidence:— that the black convicts in the State Prison on the 1st of January, 1821, formed 146¼ part of the black population of the State, while the white convicts at the same time formed but 2140 part of the white population. It is believed that a similar proportion will be found to exist in all public establishments of this State; as well Prisons as Poor Houses.

That the Committee have never been ignorant of that feeling of tenderness and kindness, which, awakened by most powerful and praiseworthy causes, has

for a long time existed in this Commonwealth for that unhappy and degraded class of individuals, whose color alone has exposed them to the cruelties and miseries of the slave trade. The Committee fully participate in that feeling, and it is widely remote, indeed, from their purpose, to endeavor to diminish or discourage it; but they consider it to be the duty of the Legislature, whatever pain or reluctance may accompany the exercise of such a power, to protect the population of this Commonwealth from all dangers and injuries, whether affecting morals or health, whether introduced from foreign countries, or from the sister States of these United States. And feeling a great degree of confidence in the results, which the Committee before stated, might be looked for from the operation of those laws, that have been passed within three years in many of the States of this Republic concerning free Negroes and Mulattoes, they deemed it expedient to recommend the subject to the attention of the Legislature. They should believe themselves equally under the necessity of soliciting the intercession of the Legislature to provide for the security of this Commonwealth against the effects of laws which would drive into Massachusetts the white paupers of a majority of the other States. The Committee cannot doubt but that such a measure of self defence would be justified by the severest interpretation of the constitution and by the truest precepts of humanity.—That the Committee would have been little justified by the circumstances of this Commonwealth at the present time, in proposing coercive laws, if that part of the population of this county, to which the subject of this report relates, had been left in its natural and original condition. But they believe the opinion well founded, that the laws lately enacted in many of the States of this Union will have an effect to drive to those States, where a universal civil and political toleration prevails, a large proportion of the persons against whom those laws are strongly and solely directed. The Committee are at a loss to understand why a political persecution should not be ac-

companied with the same emigrations, that have been observed always to attend religious persecutions, and conceding every thing that shall be asked in favor of the argument grounded upon a difference of climate, character and condition, they still are of opinion that all facts and probabilities authorize the conclusion that persons of colour will hereafter increase in this State much beyond the proportion heretofore recorded in our books of population.

The Committee have been especially led to make the foregoing remarks, though in some degree repeated from the former report, inasmuch as they have found it impossible, after all the research and deliberation in their power to bestow upon the subject, to accomplish that duty which they undertook by the direction of the House of Representatives. They have not succeeded in preparing a bill, the provisions of which they could conscientiously vindicate to this House. They have already found in the Statute Books of this Commonwealth, a law passed in 1788, regulating the residence in this State of certain persons of colour—they believe that this law has never been enforced, and ineffectual as it has proved, they would never have been the authors of placing among the Statutes a law so arbitrary in its principle, and in its operation so little accordant with the institutions, feelings, and practices of the people of this Commonwealth. The history of that law has well convinced the Committee that no measure (which they could devise) would be attended with the smallest good consequence.—That it would have been matter of satisfaction and congratulation to the Committee if they had succeeded in framing a law, which should have received the approbation of this Legislature, and should have promised to check and finally to overcome an evil upon which they have never been able to look with unconcern. But a law, which should produce that effect, would entirely depart from that love of humanity, that respect for hospitality and for the just rights of all classes of men, in the constant and successful exercise and maintenance of which, the inhabitants of Massachusetts have been singularly conspicuous.

And the Committee have agreed to this further report. That in these times, when the slave trade is matter of daily and anxious deliberation in foreign courts; when in our own country, topics connected with that subject have awakened the most protracted and fearful discussions; and when nations already begin to point to their efforts for the abolition of this hateful traffic as tokens of national superiority and triumph, it does not comport with the dignity of this State to withhold that brief statement of facts, to be found in its annals, concerning the abolition of this trade in Massachusetts,—a statement which will prove both highly honorable, and in perfect accordance with that remarkable spirit of wholesome and rational liberty, by which this Commonwealth has been greatly distinguished from the earliest period. But to the clear understanding and better elucidation of this subject, the Committee think it useful to introduce the following short account of the existence of Slavery in Massachusetts.

The earliest mention of slaves, which the Committee have been able to discover, is in the year 1639. On the 2d of October of that year, one of the early writers upon New-England had occasion to go on shore upon Noddle's Island in Boston harbour, at that time in possession of one Maverick, and there found a negro man and two negro women. From the circumstance that neither of the women could speak or understand English, it is evident that they had been in this country only a short time. One of the women was said to have been a person of high rank in Africa, and was treated by the others with great respect.

The same writer, in another place, observes, that "the people are well accommodated with servants, some of them are English, and others negroes." The negroes were doubtless slaves.

In the journal of another author, whose published writings do not pass the year 1646, mention is made of two negro maids, one of whom was converted to christianity, baptized and received into the church. The

only mention of slaves upon the early records of the town of Boston, is in the case of one Thomas Deane, in 1661, who was prohibited from employing a negro in the "manufacture of hoops, under a penalty of twenty shillings," for what reason is not stated. As so few references were made to negroes in the early writers, it is not probable that slaves were numerous at this time.

Thirty-three free negroes are mentioned in the minutes of the Selectmen of Boston, in 1708, to whom, according to a law of the Province, two hundred and eighteen days of labour were assigned upon the highways and other public works.

In the years 1754, 55, an enumeration was made by order of the Governor of all Slaves of and above the age of sixteen years, in the Province of Massachusetts Bay. One hundred and nineteen towns, returned two thousand seven hundred and twenty Slaves; but the returns of many towns have not been preserved. Of the above number of Slaves, twelve hundred and seventy were in the County of Suffolk. Four hundred and forty-two in Essex. Three hundred and sixty-one in Middlesex. Eighty-eight in Worcester. Seventy-four in Hampshire. One hundred and thirty-three in Plymouth. One hundred and twenty-two in Bristol.—Seventy-six in Barnstable. Seven in Dukes, and one hundred and forty-seven in York. In the year 1763, the number of blacks was five thousand two hundred and fourteen, and to the whites as one is to forty-five.

In 1776, the number of blacks was five thousand two hundred and forty-nine, and to the whites as one is to sixty-five. In 1784, the number of blacks was four thousand three hundred and ninety-seven, and to the whites one is to eighty. From the above statement, there is little doubt but that the return of 1754 was very incomplete. A learned writer upon one of the New-England States thinks that Slaves were more numerous before 1763, as many had enlisted in the preceding French wars, either in the navy or in the army, for the purpose of obtaining their freedom, and this opinion

was confirmed by the observations of Prince Hall, "a very intelligent black man," whom the author consulted. The period of their greatest number was therefore in all probability between 1740 and 1750. It is well known that Slaves were chiefly employed in maritime towns. Husbandmen in general preferring white to black laborers. The same author remarks that negro children were reckoned an incumbrance in a family, and when weaned, were given away like "puppies." They have been publickly advertised in the newspapers to be *given* away.

These Slaves were procured in several ways—either from the Dutch in New-York, from the Southern Provinces of North-America, into one of which Provinces 20 Slaves were imported as early as 1620, and it is probable that the greatest supply came in this manner, as many instances are mentioned of vessels having sold all that the market required in the South, arriving with the remainder of the cargo in New-England.—Few came by a direct trade, for according to the best authorities it appears that not more than three Slave Ships were ever owned at one time in Boston, though the Province of Massachusetts Bay had a great trade with Africa, in the article of Rum, of which, in the year 1769, two hundred ninety-two thousand nine hundred and sixty-six gallons were exported to that country, and in the products of the sea. These articles were exchanged for slaves, gold dust, &c. But a sufficient supply could always have been procured from the West Indies, as the Slave Trade, even in the year 1639, had already continued a hundred and thirty years, and the English themselves had been engaged in it for seventy-seven years.

The Colony, as early as 1641, ordained "that none shall be held in bond slavery, villanage or captivity, unless it be lawful captives, taken in just wars, as willingly sell themselves, and are sold to us, and such shall have the liberty and christian usage, which the law of God, established in Israel concerning such persons, doth morally require." This law applied to In-

dians, as well as to negroes, for the colonists were in the habit of holding the Indians as slaves, and even of selling those taken in war to tribes with whom the Colony was at peace.

In the year 1646, an event took place, that every inhabitant of this State will always regard with a just pride and admiration. It is the earliest public manifestation of the sense which our ancestors had of the freedom and personal rights of every man, whatever might be his country or complexion, and it is more worthy of notice in the present day, inasmuch as the slave trade was not at that time regarded by nations with the abhorrence which has been manifested concerning it within the last fifty years.

The Committee have obtained a history of the interesting transaction which led to the ordinance they are about to quote from the unpublished journal of Governor Winthrop, for the use of which they are indebted to the kind attention of a learned gentleman in this town.

One James Smith, with his mate Keysar, sailed from Boston in the year 1644, for the coast of Guinea, "there to trade for negroes." Falling into the company of some Londoners, they landed and stormed a village, killed many of the natives, but the country being alarmed and coming down upon them, they were compelled to retreat with little booty, and the loss of one man killed. Smith soon after sailed for Madeira, took on board a quantity of wine, and thence sailed for Barbadoes, to put off his cargo; but in consequence of a quarrel with his mate Keysar, he was left on shore, and the vessel returned safely to Boston. "For the matter of the negroes, whereof two were brought home in the ship, and near one hundred slain, by the confession of some of the mariners, the magistrates took order to have these two set at liberty. But for the slaughter committed, they were in great doubt what to do in it, seeing it was in another country, and the Londoners pretended a just revenge, so they called the Elders and desired their advice."

In relation to this matter, the General Court of Elections passed the following order in 1646.

"The General Court, conceiving themselves bound by the first opportunity to bear witness against the heinous and crying sin of man-stealing, as also to prescribe such timely redress for what is past, and such a law for the future as may sufficiently deter all those belonging to us, to have to do in such vile and most odious conduct, justly abhorred of all good and just men, do order that the negro interpreter, with others unlawfully taken, be by the first opportunity, at the charge of the country, for the present sent to his native country of Guinea, and a letter with him of the indignation of the Court there about and justice thereof. The execution of this order is left to the care of our honored Governor for the present, by both houses." It is, however, proper to remark, that this was a declaration against man-stealing, and not against slavery, which it has been seen was tolerated by our ancestors in certain cases.

The quotation from the colony laws just made, and the early history of the country, clearly prove, that our ancestors were much governed in their notions concerning bondage by the doctrines of the Levitical code. The same influence may be discovered in all their proceedings; and it is probably owing to the provisions made by Moses in favor of slavery, that they themselves were afterwards made to regard it with some degree of complacency. For it appears that all the acts respecting capital offences, passed before 1646, were grounded upon the same text of the Pentateuch. That relating to man-stealing, was expressed in these words, almost copied to a syllable from a verse in Exodus—"If any man stealeth a man, or mankind, he shall surely be put to death." But the entire severity of the Levitical law was far from being imitated, for the Israelites made it only death to steal an Israelite, but our ancestors made it death to steal a man of any nation whatsoever.

Other persons are mentioned in these early times as consenting to a toleration of slavery from a religious

motive of a still more exalted kind, in hopes in the words of a writer of that day "to lead them to a land of Gospel light from heathenish darkness."

In a country, where owing to the nature of the soil and climate, the labor of slaves had little value, where from a peculiar organization of body, the deaths were more numerous amongst that description of persons than amongst the whites, and where a proper knowledge of the just rights of men and the enjoyment of a reasonable liberty and independence were the study and aim of all classes of individuals, it cannot be matter of wonder that slavery should never have been much encouraged, and that a desire to effect an abolition should have been early expressed.

As early as the following year 1701, the vote was entered upon the minutes of the Selectmen of the town of Boston.——"The Representatives are desired to promote the encouraging the bringing of white servants, and to put a period to negroes being slaves."—Without referring to the decrees and declarations of the Emperor Charles the 5th, PopeLeo the 10th, of Queen Elizabeth, and of a distinguished statesman of the same century, concerning slavery, decrees made remarkable by the inconsistent conduct of those sovereigns, one whom early in the 16th century had sold a license to export four thousand negroes to the West Indies, and a second was personally engaged in the slave trade, decrees neither dictated by the voice of their people, nor followed by other acts restraining or even discouraging that practice, it may be doubted if there exists upon record an earlier testimony given by a body of men,than this vote of the town of Boston. At any rate the greatest emphasis may most deservedly be placed upon this record, and the highest and truest compliment be paid to the generous and just feeling, which prevailed at so early a period in this State, as no formal resolution, either of governments or individuals, since become so conspicuous in this undertaking, can be traced back to within twenty-six years of this time.—

But the Committee have not been able to discover that any order was passed on this subject, either by the Council or Representatives.

In 1705, a law was passed imposing a duty of four pounds upon every negro imported into the province. The whole duty was allowed in drawback, provided the negro was exported within twelve months, or died within six weeks.

And in 1712, the importation of Indians as servants or slaves, was strictly forbidden, under a penalty of forfeiture of the subject thus introduced.

But this subject awakened but little warmth or anxiety in the community till about the middle of the last century. At that time it was coupled with great propriety and success, with that controversy which concerned the most precious interests of the country. In most of the political writings of the day, the rights of the blacks are blended with the whites, and in the course of a few years it was deemed a subject worthy of being recommended to the attention of the government of the Province.

In 1767, a bill was brought into the "Great and General Court" to prevent the unwarrantable and unnatural system of enslaving mankind, and to prevent the importation of slaves into the Province.

Doubtless, evidence may be found upon the records of many of the towns of this Commonwealth of that feeling in the people which led to the framing of this bill, but the Committee deem it sufficient to copy into their report a vote of this town in instructions to their Representatives, passed unanimously in May 1766, the substance of which may be found in another vote passed in March 1767, to wit—"And for the total abolishing of slavery among us, that you move for a law to prohibit the importation and the purchasing of slaves for the future." This bill in its progress was altered into the imposing an impost upon negroes. It only passed the lower house, but even if it had also passed the Council, Gov. Bernard was particularly instructed by

his government to check and oppose all endeavors leading to the abolition of the slave trade. Though unsuccessful, this bill was introduced into the Assembly of this Province five years before the Burgesses of Virginia petitioned his Majesty to remove all impediments in the instructions of the royal governors "to the checking that inhuman and impolitic commerce the slave trade." And nine years before Mr. Hartley made his celebrated motion in the British Parliament, that "the slave trade was contrary to the laws of God and the rights of man."

In 1770, negroes began to sue their masters for their freedom, and for payment of all services rendered after the age of twenty-one. Many actions for that purpose were brought between this time and the revolution, all of which were successful

The Committee fortunately have it in their power to relate the circumstances leading to the first act of emancipation in this Commonwealth in consequence of the verdict of a jury.

These circumstances were obtained from a venerable and most respectable gentleman now living in New-Bedford, and still an active member of that religious society which has truly merited the respect and gratitude of all good men for its unequalled labors in the most christian, salutary and memorable work undertaken by man. This gentleman while living in Nantucket, confident that no law of the Colony justified slavery, received on board a vessel called the Friendship, at that time engaged in the whale fishery, and commanded by Elisha Folger, a young man by the name of "Boston," held as a slave by the heirs of Wm. Swain; and at the termination of the voyage, paid this young man his proportion of the proceeds. This circumstance took place between the years 1769 and 1770. In the mean time his reputed master, John Swain, brought an action against the Captain of the vessel, in the Court of Common Pleas at Nantucket, for the recovery of his slave; but the jury returned a verdict in favor of the defendant—and the slave called Prince Boston, was manu-

mitted by the magistrates. Swain appealed from this judgment to the Supreme Court at Boston. Mr. Rotch thought it advisable to retain John Adams as his counsel in the case; but Swain, discouraged by the feelings of the people and the circumstances of the country, never presented the appeal. After that period, all the slaves on the island of Nantucket obtained their freedom. It adds greatly to the satisfaction which this event inspires, to be assured that Prince Boston was a respectable and industrious man, and conducted himself with such prudence and economy, as to be possessed, at an early period in his life of one hundred pounds sterling in the English funds.

The decisions in these trials furnish undoubted evidence of the sentiments of the people, in the highest degree honorable to them, but it is difficult to reconcile such decisions either with that principle of the charter, which conveyed only to native born subjects in the province, the rights and immunities of subjects born within the "realm of England"—or with that principle upon which rested the immortal judgment in the case of Sommersett, because not only had slavery always existed in New-England, but there was a positive law of the colony establishing it in certain cases. But as a manifestation of public feeling, and as productive of the most valuable results, it is not in our power to bestow too great commendation upon the sublime and eternal principles to which these juries appealed; and they are therefore entitled to the remarkable praise of having not only anticipated that decision of Lord Mansfield, which forever put at rest this great question in England, but of having first established in courts of law those doctrines which have since been incorporated into all the bills of rights of the state governments of this country. However, an excellent historian of one of the New-England states mentions a fact highly honorable to this state, that several towns passed votes abolishing slavery within their precincts, and discharging the masters of slaves, thus emancipated, from all liability to

charges for the support of the slave—a very meritorious proceeding, but a certain confession that slavery was recognized by the laws of the Commonwealth.

In 1773, a petition was presented by the negroes, praying for the abolition of slavery. This petition was read and referred to the next session ; but it does not appear to have been called up at that time.

In January 1774, a bill "to prevent the importation of negroes and others,as slaves into this Province"–passed both the Council and the House of Representatives, and on the 8th day of March, it was presented to Governor Hutchinson, for his signature ; but the next day the House was prorogued. The Governor, however, informed a deputation of negroes who had gone to his house to solicit his approbation of the bill, that his instructions strictly forbade him from approving any bill,which should have a tendency to check the slave trade. His successor Governor Gage, used language equally decided and emphatic, and no doubt was entertained that the British Government was as determined to resist all endeavors to abolish slavery, as to remove other acts by which this country was at that time oppressed. The historian already referred to, makes the following important remark, that the principle inserted in the Constitution of this State in 1780, that all men are born free and equal, applied particularly to the blacks, and in confirmation of that observation, he mentions the following singular fact. A man tried in Worcester, in 1783, for beating a black whom he called his slave, was found guilty and fined forty shillings, by an application by the Judge of this principle.

It may be observed in this place, that the constitution of this state is the only one among the early constitutions except the constitution of New-Hampshire, in which this language can be found, though the substance of it is strongly expressed in the declaration of Independence. The construction given to this phrase in New-Hampshire is this, that all blacks born since the formation of the constitution are free, but not those born

before that event. The doctrine of Massachusetts was however acknowledged in Pennsylvania.

It may therefore be properly considered that slavery was effectually abolished in this state just before the declaration of independence, though the law by which this event was officially and formerly made known was not passed till the 26th March, 1788, seventeen years before the abolition in Denmark, the earliest European abolition. This law imposed a penalty of 50*l.* upon every citizen or person residing in this Commonwealth, for each slave bought or transported, and 200*l.* upon every vessel engaged in the slave trade; and it is said that the law was especially enacted at that time in consequence of the wicked and base conduct of an individual; who was engaged in loading a vessel in Boston harbour, & having decoyed three black men on board under pretence of work, and having secured them in the hold, sailed away for the West Indies. This proceeding being made known, public indignation was infinitely excited, and the Governor and French Consul immediately wrote letters to the Governor of the Island of St. Bartholomew, where the vessel was bound. These unhappy men were offered for sale in that Island, but the Gove nor having received the letters from Boston, prohibited the sale. The blacks were soon after released and sent home to Boston, where they arrived on the 29th of July, which on that account was made a day of great rejoicing.

In the first census of the inhabitants of the United States in the year 1790, no other than free persons were returned from Massachusetts, the only State in the Union, which at that time did not contain slaves, and the only state represented in the first Congress, held at New-York in 1789, which had formally abolished slavery.

In concluding this report, there remains to the Committee the single duty of submitting the following remarks. The feelings of the people disclosed since the year 1760 in the votes of towns, and in the verdicts of

juries—the compositions of many learned and enlightened individuals published just before the declaration of independence, for the purpose of explaining and interpreting the just principles of a proper freedom—the fact that there is no law at present in force which makes a distinction between white and black persons, (rejection from the militia being derived from a law of the United States,) the restriction as to marriage between whites and blacks equally affecting whites as well as blacks—the same law which allows justices to expel blacks from the state after a certain notice expressly recognizing the right of blacks to become citizens—a law, the constitutionality of which has been called in question, and which it is well known was passed on the same day as the abolition act of March 1788, in order to prevent the state from being overrun with runaway slaves —blacks having the same public provisions for education, and the same public support in case of sickness and poverty—many blacks before and during the revolution having obtained their freedom by a legal process, and as the spirit of the constitution of this state abrogates all exclusive laws, thereby becoming invested with all the rights of freemen and with a capability of becoming freeholders; and the constitution distinctly declares that a freeholder without other exception than relates to religion, and property, and age, is capable of being elected or appointed to any office or place under the State—and above all, the construction given to the first principle in the declaration of rights at the time of the adoption of this constitution both in the public mind and in the courts of law, clearly manifest and demonstrate that the people of this Commonwealth have always believed negroes and mulattoes to possess the same right and capability to become citizens as white persons.

In giving this account of the existence of slavery and its abolition in Massachusetts, the Committee have not been insensible to the great merits of other States in this particular. They remember with gratitude and admiration the solemn agreement entered into by all the

States then assembled in the first continental congress held in Philadelphia, wholly to discontinue the slave trade; and as a farther evidence of the high sense which the Committee entertain of the endeavours of other States in this great work, they shall finish this portion of the report by extracting the following remarkable expression from a petition presented to his majesty in 1772, by the House of Burgesses of Virginia—"The importation of slaves into the colonies, under its present encouragements, we have too much reason to fear, will endanger the very existence of your Majesty's American dominions."

And the Committee pray now to be discharged from the further consideration of the subject committed to them by an order of the House of Representatives, of June 15, 1821. For the Committee,

THEODORE LYMAN, Jr.

House of Representatives, January 15, 1821.

Read and accepted,

JOSIAH QUINCY, *Speaker.*

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